

Recently Enacted Legislation

Lien and Bond Law Changes

On July 12, Governor Perdue signed into law Senate Bill 42 and House Bill 1052 that make dramatic changes to lien and bond law in North Carolina. With respect to lien law, the most dramatic change is the introduction of the lien agent concept. With respect to bond law, the most dramatic change is the limitation of contractors' double payment obligations on public projects. Here's a synopsis of the changes:

Lien Agent. Effective April 1, 2013 North Carolina law will require the designation of a Lien Agent for private projects where the total cost of the improvements is \$30,000.00 or more, except existing single family residences. The owner will choose the Lien Agent from a list of Lien Agents maintained by the Department of Insurance. If the project is one that requires a building permit, then the permit is supposed to identify the Lien Agent, and the permit is supposed to be conspicuously and continuously posted on site.

A potential lien claimant who wants to preserve its lien rights should serve a Notice to Lien Agent within 15 days after first furnishing labor or materials; serve the Notice to Lien Agent before the owner conveys an interest in the real property; or file a Claim of Lien on Real Property before the owner conveys an interest in the real property. Under the new law, the Lien Agent is to be served with a copy of the claimant's Notice of Claim of Lien Upon Funds. If the Lien Agent doesn't receive the Notice to Lien Agent within 15 days after first furnish date or prior to conveyance of the real property, or the claimant does not file a Claim of Lien on Real Property prior to closing, then a potential lien claimant's lien rights are (a) terminated if the property is sold or (b) subordinated to the new lender if the property is mortgaged.

Double Payment on Public Projects. Effective January 1, 2013 North Carolina law will require contractors on public projects to provide their subcontractors and suppliers with a "Project Statement." Subcontractors must provide their subcontractors and suppliers with the contractor's Project Statement. Subcontractors and suppliers on public projects more remote that first tier must then serve "Notice of Public Subcontract" on the contractor. The Notice of Public Subcontract preserves claims for labor and/or materials supplied within 75 days prior to service of the notice, and thereafter. However, the obligation to provide the Notice of Subcontract applies only to that portion of the claim in excess of \$20,000. Also, a subcontractor or supplier may serve a written request to the contractor for a copy of the payment bond, and if the contractor fails to provide a copy of the bond within 7 days of being served with the request, the claimant is not obligated to serve the Notice of Public Subcontract. The Notice of Public Subcontract is in addition to the notice of claim which under North Carolina law must be served within 120 days of the payment bond claimant's date of last work.

For more information on the effects of Senate Bill 42 and House Bill 1052, see the following:

<http://constructionlawcarolina.com/author/cons2214/>

<http://www.nexsenpruet.com/publications-660.html>

<http://www.andersonandjones.com/modules/news/article.php?storyid=70>

http://www.cgspllc.com/nc_construction_law_information/notes/